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In the Supreme Court of the United States

OCTOBER TERM, 1967.

No. 106.

ETEL OBER and IOAN NAGYIVAN,
Petitioners,

vs.

JAMES C. NAGY and JOSEPH NAGY,
Respondents.

PETITION FOR REHEARING
Of Petition for a Writ of Certiorari to the Supreme Court of Ohio.

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Petitioners pray that this Court grant rehearing of its order of October 16, 1967, denying the petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Ohio Supreme Court in the above entitled case as prayed for in the petition filed April 21, 1967, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

1. During the pendency of the petition for certiorari, and before this Court announced its order herein, a similar problem arose regarding official documents from Romania in the matter of the *Estate of Vince Belensay, etc., deceased,* Superior Court of the State of California, County of San Diego, No. 77619.

In the *Belensay* case, as in the present case, the court is of the opinion that certain documents which were

executed according to the laws of Romania would not be acceptable because they were not executed under oath and as required by California law. Significantly, in *Belensay*, the California court rejected evidence of heirship which was contained in eleven sets of interrogatories submitted by the Attorney General of California and answered by all the prospective heirs in the presence of the State Notary in Romania in accordance with Romanian law. The additional documents pertaining to the subject of heirship such as an affidavit of heirship, birth and death certificates, and a declaration about decedent's family given by two disinterested parties before the State Notary in Romania, all duly authenticated, were insufficient, according to the California Court, to support the claim of the Romanian nationals to the decedent's estate.

The question continues to be one of large, practical importance in the administration of decedents' estates throughout the country wherein the rights of foreign heirs, living behind the so-called "iron curtain," are involved. In a recent case, *Balaszinki v. Lebid*, 65 N. J. Super. 483, 168 A. 2d 209, a New Jersey court had before it, on the question of heirship, a document similar to petitioners' exhibits 2F and 2G. With reference to the use of such documents as evidence to establish heirship, the court held:

> "A Russian certificate of survivorship executed by a notary, establishing identity of a woman and that she was alive, and the Russian document signed before chairman of Village Council, by persons stating that they know of the marriage of such woman and that marriage had never been dissolved and that two children had been born of marriage and that woman's husband had gone to the United States and setting forth residence of woman and children, were admissible."

There is a total lack of uniformity among the state courts regarding the use of foreign documents to establish heirship. In situations where the highest state court has declared that a resident of a so-called "iron curtain" country has the right to receive his inheritance in the country of his domicile (*In re Estate of Chichernea,* 57 Cal. Rptr. 135, 1967), certain lower courts, as in *Belensay,* continue the notorious practice of withholding such inheritance by entertaining unwarranted objections to the use of foreign documents on the question of heirship.

2. The Solicitor General was in serious error in his statement to this Court which is to be found on page 3 of the Memorandum for the United States, wherein he stated "No proof, independent or otherwise, was offered to establish the relationship of the declarants with the family." There was no dispute about the relationship of the petitioners, and, therefore, there was no issue as to whether the decedent had a brother named Ivan Nagyivan and a niece named Etel Ober in Romania. The record is replete with such evidence. (Relevant testimony from the record is appended hereto, Appendix I.) The only issue was whether these parties survived the decedent. It is clearly evident, therefore, that the admissibility of the legal documents from Romania is of extreme relevance on the question whether the petitioners are alive. (See recent letter from petitioner, Etel Ober, to counsel, appended hereto, Appendix II.) Thus, the official declarations of the State Notary in Romania that the petitioners, who were first identified by their Identity Card, appeared before him and executed the respective documents in the presence of two witnesses, are of serious consequence to the controversy. As we have seen, the heirship of the petitioners was not in dispute—the only issue was whether they survived and are alive. Thus, the question arises regard-

ing the use of the "Official declarations" on the questions of survivorship of the petitioner, and their evidential effect as "legal documents in the courts of justice throughout the United States." On this subject, the author in *Wigmore on Evidence*, 3rd Ed., 518, Section 1633, states:

> "The subjective influence of the official duty being the justifying circumstances, it follows that an official statement by a foreign officer is equally admissible with one made by a domestic officer. That the duty is not recognized by domestic law is immaterial; it exists for the foreign officer; and so far as it exists, it affords an equally sufficient sanction. This application of the principle, though plain, has rarely been drawn in question."

The Solicitor General misapprehended the nature of the controversy inasmuch as he relied upon the factual and legal correctitude of the Probate Court's decision. It is that decision which, in essence, is being challenged as constitutionally invalid in this Court. In addition, the Solicitor General completely ignored the petitioners' due process argument concerning the decision below.

We submit that the federal question presented is substantial.

CONCLUSION.

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of Ohio.

Respectfully submitted,

JOHN R. VINTILLA,
Counsel for Petitioners.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

JOHN R. VINTILLA,
Counsel for Petitioners.

APPENDIX I.

TESTIMONY OF RESPONDENT, JOSEPH NAGY.

(AR 38, 39, 40, 41, 42):

Q. And is it your testimony that you do not have an uncle who lived or is living in Romania?

A. Well, I don't know if he is living or not.

Q. Your testimony is absolutely that you have no sister.

A. That is right.

Q. You never had a sister?

A. I had a sister but she died.

Q. Where did she die?

A. In Romania.

Q. You say you got a letter from the Red Cross?

A. That is right.

Q. When was this?

A. What year was that? 1947, 1947.

Q. Is that the last attempt that you made to reach your sister?

A. Yes.

Q. Have you written to her since?

A. No, we didn't have no address or anything.

Q. Have you written to anybody in Romania to ascertain information about her?

A. No.

Q. What Red Cross Office was that that informed you?

A. Well, I don't remember.

Q. Who caused that search to be made; who caused the Red Cross to try to find her?

A. My father and mother.

Q. Is it your testimony that your father after 1947, never made any effort at all to find your sister?

A. No, because he got that telegram that she died two years ago.

Q. You got it from the Red Cross office?

A. Yes.

Q. She died in 1945?

A. Yes.

Q. And you deny knowledge of any letters that may have come to your father or to you in 1959 or after that or before that from a party—purportedly from the party signing as Etel Ober?

A. That is right.

TESTIMONY OF JAMES NAGY.

At the same hearing, James Nagy testified as follows, page 48:

The Referee: Now do you substantially say the same as your brother here?

The Witness: Yes, Your Honor, I would,—I do.

Testimony of Respondent, James Nagy (Cross-examination).

(OR 33, 35, 36, 37, 40):

Q. When did you come to the United States, what year?

A. 1922.

Q. Where did you come from?

A. From Timisoara.

Q. Was Etel married when you came?

A. Yes, she was married, that's why she didn't come with us.

Q. What was her husband's name?

A. Karol Ober.

Q. In what year was that that you received a notification?

A. It was '47 or '48; I don't know.

Q. And how did you receive the notification by telephone, telegraph? Where did the telegram come from?

A. Gee whiz, I don't know. I wouldn't know.

Q. I am asking you where did the Red Cross telegram originate that informed you that your sister was dead, in Cleveland, some other city in the United States, or Europe, or from some other part of the world?

A. I don't know.

(Direct examination)

Q. In other words, even after you received the notice, as you have testified, from the Red Cross that your sister was dead, your father would insist on your sending some money?

A. Everytime he would get a letter, he would get all upset and say maybe she is this or that. "We got to send her some money," and he would jump on me. I would put in $10.00. I don't, I don't know how much he would send.

APPENDIX II.

LETTER FROM ETEL OBER ADDRESSED TO COUNSEL FOR PETITIONER.

Timisoara 25 August 1967

Dear Mr. Lawyer

With reference to the lawsuit involving my inheritance against my brother Iosif Nagyivan and Emeric (James) Nagyivan, please inform me about its status. I cannot imagine why you have not written me until now.

I beg you insistently to inform me urgently about the status of the lawsuit inasmuch as I have great need for the money.

With respect,

/s/ Ober Etel

Timisoara III Cozia Street No. 23
(formerly Ion Vasii Street)